

**NEVADA DEPARTMENT OF
CONSERVATION & NATURAL RESOURCES**

STATE ENVIRONMENTAL COMMISSION

HEARING ARCHIVES FOR

REGULATORY PETITIONS

COMMISSION PETITION NO. 1999-05

LEGISLATIVE COUNSEL BUREAU (LCB) FILE NO. R-020-99

DOCUMENTS INCLUDED IN THIS FILE:

YES SECRETARY OF STATE FILING FORM

YES DISCLOSURE STATEMENT PURSUANT TO NRS 233B

REGULATORY PETITIONS

ORIGINAL DRAFTED BY COMMISSION

ADOPTED BY COMMISSION

AS FILED AND CODIFIED BY LCB

Secretary of State
Filing Data

**For Filing Administrative
Regulations**

For Emergency
Regulations Only

Effective Date

Expiration Date

Governor's Signature

State Environmental Commission

Classification ☐ Proposed ☐ Adopted By Agency ☒ Temporary ☐ Emergency ☐

Brief description of action: **Petition 1999-05 (R-020-99)** is a permanent amendment to NAC 445A.228 to 445A.292. The amendments clarify wording, remove outdated language, conforms the water pollution regulations to statutes, addresses who must sign a discharge monitoring permit, clarifies establishment of effluent limits and compliance schedules and provides for minor water control discharge permit modifications. The amendments also provide for the transfer of permits to new owners. NAC 445A.105 and 445A.246 was repealed.

Authority citation other than 233B: NRS 445A.425

Notice date: November 10, November 17 and November 24, 1998 and August 10, August 18 and August 26, 1999

Hearing date: December 9, 1998 (Temporary) and September 9, 1999 (Permanent)

Date of Adoption of Agency: December 9, 1998 (Temporary) and September 9, 1999 (Permanent)

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED
BY ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066
PERMANENT PETITION 1999-05 (R-020-99)
STATE ENVIRONMENTAL COMMISSION**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) 445A. This permanent regulation deals with amendments to the water pollution control program.

1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

Petition 1999-05 (R-020-99), was noticed three (3) times: November 10th, 17th and 24th, 1998 as a temporary regulation and on August 10, 18 and 26, 1999 as a permanent regulation in the Las Vegas Review Journal and the Reno Gazette-Journal newspapers. Regulatory workshops were held on November 6, 1998 in Carson City and November 9, 1998 in Elko. The regulation was adopted on December 9, 1998 as a temporary regulation and on September 9, 1999 as a permanent regulation by the State Environmental Commission. Oral testimony was received from Elko county during temporary adoption as a regulation. The testimony focused on the 9 month time to comply with regulations and the impact of new water quality standards and transfer requirements on existing wastewater treatment facilities. No other written comments were received from at the public hearing during temporary adoption of the regulation. No oral or written comments were received from the public during permanent adoption of the regulation. The public was also mailed the notice of intent and agenda through the Environmental Commission's mailing list. A copy of the written comments may be obtained by calling the Nevada State Environmental Commission (775) 687-4670 extension 3117, or writing to the Commission at 333 W. Nye Ln., Room 138, Carson City, Nevada 89706-0851.

2. The number persons who:

(a)	Attended each hearing;	30
(b)	Testified at each hearing:	1
(c)	Submitted to the agency written comments:	0

3. A description of how comment was solicited from affected businesses, a summary of their response, and a explanation how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses by the notices in the newspapers, as outlined in #1 and by direct mail to interested persons subscribing to the Commission's mailing list. See above statement for dates of the public notices. Oral testimony in support of the regulation was received from the Nevada Mining Association during temporary adoption. Testimony was received from Barrick Gold Mines regarding the need to make a technical clarification of a term during adoption as a permanent regulation. No written testimony was received from businesses on this regulation. A copy of the written comments may be obtained by calling the Nevada State Environmental Commission (775) 687-4670 or writing to the Commission at 333 W. Nye Ln., Room 138, Carson City, Nevada 89706-0851.

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The permanent regulation was adopted by the State Environmental Commission on September 9, 1999 with amendment to the regulation in response to business concerns.

5. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:

- (a) Both adverse and beneficial effects: and
- (b) Both immediate and long-term effects.

The permanent regulation is not anticipated to have any significant adverse short or long term economic impact on Nevada businesses. The regulation should make it easier for affected businesses to comply by simplifying the requirements for securing a water pollution control permit. The adoption of this regulation is not anticipated to have a direct short or long term adverse economic impact upon the public.

6. The estimated cost to the agency for enforcement of the adopted regulation.

There is no additional cost to the agency for enforcement.

7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

The regulations do not overlap or duplicate any regulations of another state or local governmental agency.

8. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

The regulations are no more stringent than federal regulations.

9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

There will be no additional fees, nor will there be an increase in fees associated with this regulation.

END OF FILING STATEMENT FOR 1999-05 (R-020-99)

ADOPTED PERMANENT REGULATION OF THE NEVADA STATE ENVIRONMENTAL COMMISSION

LCB File No. R020-99

EXPLANATION - Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted. Language in *italics and underscored* is material added by amendment upon adoption by the Commission.

AUTHORITY: §§1-16, NRS 445A.425

Section 1. NAC 445A.228 is hereby amended to read as follows:

445A.228 **1.** *Except as provided for in subsection 2, a person shall not discharge a pollutant from a point source into any waters of this state without obtaining a permit from the department.*

2. Although not exempted from complying with all other applicable laws, rules and regulations regarding pollution, the following are specifically exempted from the requirements to obtain a permit:

~~1.~~ **(a)** Persons utilizing *an* individual sewage disposal ~~[systems which do not discharge pollutants into the waters of the state, other than toxic materials,]~~ *system or other sewage disposal system that uses a soil absorption system for the treatment and disposal of domestic wastes, with accumulative flows of less than 5000 gallons per day,* providing the system is approved and is installed, operated and maintained in accordance with the rules and regulations and other requirements of the district health departments or the state board of health. This exemption does not preclude the possibility that health authorities will require permits.

~~2. Persons~~ **(b)** *Except as otherwise provided in this paragraph, persons* discharging pollutants ~~[other than toxic materials]~~ into a publicly owned or privately owned sewerage system, if the owner of such sewerage system has a valid permit from the department. In such cases, the owner of the sewerage system assumes ultimate responsibility for controlling and treating the pollutants which he allows to be discharged into the system. *The department may require an industrial user who discharges pollutants into a publicly owned treatment works which does not have an approved pretreatment program to obtain a permit pursuant to NAC 445A.257.*

~~3.~~ **(c)** Discharges of pollutants from agricultural and silvicultural activities, including, *without limitation,* irrigation return flow and runoff from orchards, cultivated crops, pastures, rangelands and forest lands, except that this ~~[exclusion]~~ *exemption* does not apply to the following:

~~(a)~~ **(1)** Discharges from facilities which confine animals if the facilities contain, or at any time during the previous 12 months contained, for a total of 30 days or more, any of the following types of animals at or in excess of the number listed for each type of animal:

- | | |
|----------------|----------------------------------------------------------------------------------------------------------------------|
| (1) | (I) Slaughter and feeder cattle, 1,000; |
| (2) | (II) Mature dairy cattle (whether milkers or dry cows), 700; |
| (3) | (III) Swine weighing over 55 pounds, 2,500; |
| (4) | (IV) Horses, 500; |
| (5) | (V) Sheep, 10,000; |
| (6) | (VI) Turkeys, 55,000; |
| (7) | (VII) Laying hens and broilers, if the animal confinement facility has continuous overflow watering, 100,000; |
| (8) | (VIII) Laying hens and broilers, if the animal confinement facility has liquid manure handling |

systems, 30,000; or

~~{(9)}~~ (IX) Ducks, 5,000.

~~{(b)}~~ (2) Discharges from facilities which confine animals if such facility or facilities contain, or at any time during the previous 12 months contained, for a total of 30 days or more, a combination of animals such that the sum of the following numbers is 1,000 or greater: The number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 55 pounds multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

~~{(c)}~~ (3) Discharges from production facilities for aquatic animals.

~~{(d)}~~ (4) Discharges of irrigation return flow (such as tailwater, tile drainage, surfaced groundwater flow or bypass water) operated by public or private organizations or natural persons if the source of water is effluent from a treatment works.

~~{(e)}~~ (5) Discharges from any agricultural or silvicultural activity which have been identified by the administrator or the director as a significant contributor of pollution.

Sec. 2. NAC 445A.230 is hereby amended to read as follows:

445A.230 1. ~~{The applicant shall file a complete permit application no later than 60 days following receipt of notice from the director that the applicant's previously filed Refuse Act or NPDES application is so deficient as not to have satisfied the filing requirements.}~~

~~2.}~~ Any person wishing to commence future discharges of pollutants must file a complete permit application ~~{either:~~

~~{(a) Not} on forms provided by the department, not less than 180 days in advance of the date on which ~~{it is desired} the person desires~~ to commence the discharge of pollutants ~~{; or}~~~~

~~{(b) In sufficient time prior to the commencement of the discharge of pollutants to ensure compliance with the requirements of § 306 of the Act, any applicable zoning or siting requirements established pursuant to § 208(b)(2)(c) of the Act and any other water quality standards or limitations.}~~

~~3.}~~ , unless the department has granted permission for a later date.

2. The director:

(a) May require the submission of additional information after a permit application has been filed; and

(b) Shall ensure that if a permit application is incomplete or otherwise deficient, processing of the application is not completed until such time as the applicant has supplied the missing information or otherwise corrected the deficiency.

~~{4.}~~ 3. If, upon review of an application, the department determines that a permit is not required, the department shall notify the applicant in writing of this determination. The notification constitutes final action by the department on the application.

~~{5. A person presently discharging pollutants must have filed a complete Refuse Act or NPDES application with the Federal Government.}~~

Sec. 3. NAC 445A.231 is hereby amended to read as follows:

445A.231 1. ~~{Application}~~ Except as otherwise provided in subsection 3, application and reporting forms submitted to the department must be signed by:

(a) A principal executive officer of the corporation (of at least the level of vice president) or his authorized representative who is responsible for the overall operation of the facility from which the discharge

described in the application or reporting form originates.

(b) A general partner of the partnership.

(c) The proprietor of the sole proprietorship.

(d) A principal executive officer, ranking elected official or other authorized employee of the municipal, state or other public facility.

2. Each application must contain a certification by the person signing the application that he is familiar with the information provided, that to the best of his knowledge and belief the information is complete and accurate and that he has the authority to sign and execute the application.

3. *A discharge monitoring report must be signed by the senior certified operator of the facility from which the discharge described in the report originates or the person directly responsible for operating the facility.*

Sec. 4. NAC 445A.234 is hereby amended to read as follows:

NAC 445A.234 1. Public notice of every complete application for a discharge permit, except ***for a temporary permit or*** a permit for pretreatment discharge or the poisoning of trash fish, must be circulated in a manner designed to inform interested and potentially interested persons of the proposed discharge and of the proposed determination to issue or deny a permit for the discharge. Procedures for the circulation of public notice must include at least the following:

(a) Notice must be circulated within the geographical area of the proposed discharge by publishing in a local newspaper or periodical or, if the local newspaper is not a daily newspaper, in a daily newspaper of general circulation; and

(b) Notice must be mailed to any person or group on the mailing list maintained by the department or upon request.

2. The director shall add the name of any person or group upon request to a mailing list to receive copies of notices for permit applications.

3. The director shall provide a period of not less than 30 days following the date of the public notice during which time interested persons may submit their written views on the tentative determinations with respect to the application. All written comments submitted during the 30-day comment period must be retained by the director and considered in the formulation of his final determinations with respect to the permit application. The period for comment may be extended at the director's discretion.

4. The contents of the public notice of applications for permit must include at least the following:

(a) The name, address and phone number of the department;

(b) The name and address of each applicant;

(c) A brief description of each applicant's activities or operations which result in the discharge described in the application (for example, municipal waste treatment plant, steel manufacturing or drainage from mining activities);

(d) The name of the waterway to which each discharge is made and a short description of the location of each discharge on the waterway, indicating whether such discharge is existing or new;

(e) A statement of the tentative determination to issue or deny a permit for the discharge described in the application;

(f) A brief description of the procedures for the formulation of final determinations including the required 30-day comment period and any other means by which interested persons may influence or comment upon those determinations; and

(g) The address and phone number of the premises at which interested persons may obtain further information, request a copy of the draft permit prepared pursuant to subsection 2

of NAC 445A.233, request a copy of the fact sheet and inspect and copy relevant forms and documents.

Sec. 5. NAC 445A.235 is hereby amended to read as follows:

445A.235 The director shall notify other appropriate governmental agencies of each complete application for a permit, ***except for a temporary permit***, and shall provide the agencies with an opportunity to submit their written views and recommendations. Procedures for such notification must include the following:

1. At the time of issuance of a public notice, pursuant to NAC 445A.234, transmission of a fact sheet to any other states whose waters may be affected by the issuance of a permit and, upon request, providing such states with a copy of the application and a copy of the ~~proposed~~ ***draft*** permit prepared pursuant to subsection 2 of NAC 445A.233. Each affected state must be given an opportunity to submit written recommendations to the director and to the regional administrator which the director may incorporate into the permit if issued. Should the director fail to incorporate any written recommendations thus received, he shall provide to the affected state or states, and to the regional administrator, a written explanation of his reasons for failing to accept any of the written recommendations.

2. A procedure, similar to that prescribed by subsection 1, for notifying any interstate agency having water quality control authority over waters which may be affected by the issuance of a permit.

3. At the time of issuance of a public notice pursuant to NAC 445A.234, transmission of a fact sheet to the appropriate district engineer of the Army Corps of Engineers for applications involving discharges to navigable waters. A copy of any written agreement made pursuant to this subsection between the director and a district engineer must be forwarded to the regional administrator and must be made available to the public for inspection and copying.

4. A procedure for mailing copies of fact sheets of applications for permits to any other federal, state or local agency upon request and providing such agencies an opportunity to respond, comment or request a public hearing pursuant to NAC 445A.238.

5. Procedures for notice to and coordination with appropriate public health agencies for the purpose of assisting the applicant in coordinating the applicable requirements of the Act with any applicable requirements of such public health agencies.

Sec. 6. NAC 445A.236 is hereby amended to read as follows:

445A.236 1. For every discharge~~;~~ ***for which public notice was required pursuant to NAC 445A.234***, the director shall prepare and, following ***the*** public notice, shall send upon request to any person a fact sheet with respect to the application described in the public notice. The contents of such fact sheets must include at least the following information:

(a) A sketch or detailed description of the location of the discharge described in the application;
(b) A quantitative description of the discharge described in the ~~NPDES~~ application which includes at least the following:

(1) The rate or frequency of the proposed discharge~~;~~ ***and***, if the discharge is continuous, the average daily flow in gallons per day or million gallons per day;

(2) For thermal discharges subject to limitation under the Act, the average summer and winter temperatures in degrees Fahrenheit; and

(3) The average daily discharge in pounds per day of any pollutants which are present in significant quantities or which are subject to limitations or prohibition under § 301, 302, 306 or 307 of the Act, ***33 U.S.C. §1311, 1312, 1316 or 1317***, and regulations published thereunder;

(c) The tentative determinations required under NAC 445A.233;

(d) A brief citation, including a brief identification of the uses for which the receiving waters have been classified, of the water quality standards and limitations applied to the proposed discharge; and

(e) A fuller description of the procedures for the formulation of final determinations than that given in the public notice including:

(1) The 30-day comment period required by subsection 3 of NAC 445A.234;

(2) Procedures for requesting a public hearing and the nature thereof; and

(3) Any other procedures by which the public may participate in the formulation of the final determinations.

2. The director shall add the name of any person or group upon request to a mailing list to receive copies of fact sheets.

Sec. 7. NAC 445A.241 is hereby amended to read as follows:

445A.241 1. The duration of permits is fixed and does not exceed 5 years. The expiration date must be recorded on each permit issued. A new application must be filed with the department to obtain renewal or modification of a permit. Applications for renewal must be filed at least 180 days prior to expiration of the permit.

2. For the reissuance of a permit, the same procedures must be followed as for the initial issuance of a permit.

3. A person who holds an expired permit and who has submitted a timely application for renewal of the permit in the manner set forth in subsection 1 may continue to conduct the permitted activity in accordance with the terms and conditions of the expired permit until the department takes final action on the application unless:

(a) The department determines that the permittee is not in substantial compliance with the terms and conditions of the expired permit or with a compliance schedule designed to bring the permittee in compliance with the terms and conditions of the expired permit;

(b) The department, as a result of an action or the failure to act of the permittee, has been unable to take final action on the application on or before the expiration date of the permit; or

(c) The permittee has submitted an application with major deficiencies or has failed to supplement properly the application in a timely manner after being informed of deficiencies.

Sec. 8. NAC 445A.243 is hereby amended to read as follows:

445A.243 In establishing an effluent limitation~~[-]~~ ***to carry out the policy of this state set forth in NRS 445A.305,*** consideration must be given to, but is not limited by, the following:

1. The effect of the discharge on the receiving waters and its beneficial use.

2. The need for standards that specify by chemical, physical, biological or other characteristics the extent to which pollution by various substances will not be tolerated.

3. Standards for water quality ***and effluent limitations*** promulgated from time to time by the United States Environmental Protection Agency, including the following:

(a) Effluent limitations under §§ 301 and 302 of the Act~~[-]~~, ***33 U.S.C. §§ 1311 and 1312.***

(b) Standards of performance for new sources under § 306 of the Act~~[-]~~, ***33 U.S.C. § 1316.***

(c) Effluent standards, effluent prohibitions and pretreatment standards under § 307 of the Act~~[-]~~, ***33 U.S.C. § 1317.***

(d) Any more stringent limitations, including those:

(1) Necessary to meet standards for water quality and treatment or schedules of compliance, established pursuant to any state law or regulation;

(2) Necessary to meet any other federal law or regulation; or

(3) Required to carry out any applicable standards for water quality.

Such limitations must include any legally applicable requirements necessary to carry out total maximum daily loads established pursuant to § 303(d) of the Act, **33 U.S.C. § 1303(d)**, and incorporated in the continuing planning process approved under § 303(e) of the Act, **33 U.S.C. § 1303(e)**, and any regulations and guidelines issued thereunder.

(e) Any more stringent legally applicable requirements necessary to comply with a plan approved pursuant to § 208(b) of the Act.

4. In the application of water quality standards and limitations and other legally applicable requirements pursuant to subsection 3, the director shall, for each issued **NPDES** permit, specify average and maximum daily quantitative limitations for the level of pollutants in the authorized discharge~~[-]~~ **in terms of [weight] mass, except quantitative limitations that are not appropriately expressed in terms of weight, including, without limitation, pH, temperature and radiation.**

Sec. 9. NAC 445A.250 is hereby amended to read as follows:

445A.250 1. Any discharge authorized by a permit may be subject to such monitoring requirements as may be reasonably required by the director including the installation, use and maintenance of monitoring equipment or methods, including, where appropriate, biological monitoring methods.

2. Any discharge authorized by a permit which:

(a) Is not a minor discharge; **or**

(b) The regional administrator requests, in writing, be monitored.~~[-]~~ **or**

~~[-(c) Contains]~~

3. **Any discharge authorized by an NPDES permit which contains** toxic pollutants for which an effluent standard has been established by the administrator pursuant to section 307(a) of the Act, must be monitored by the holder of the permit for at least the following:

~~[(1)]~~ (a) Flow, in gallons per day; and

~~[(2)]~~ (b) All of the following pollutants:

~~[(1)]~~ (1) Pollutants either directly or indirectly through the use of accepted correlation coefficients or equivalent measurement which are subject to reduction or elimination under the terms and conditions of the permit;

~~[(2)]~~ (2) Pollutants which the director finds, on the basis of information available to him, could have a significant impact on the quality of the waters of the state;

~~[(3)]~~ (3) Pollutants specified by the administrator, in regulations issued pursuant to the Act, as subject to monitoring~~[-]~~ **as a requirement of an NPDES permit;** and

~~[(4)]~~ (4) Any pollutants in addition to the above which the regional administrator requests, in writing, be monitored~~[-]~~

~~[(3)]~~ **as a requirement of an NPDES permit.**

4. Each effluent flow or pollutant required to be monitored pursuant to this subsection must be monitored at intervals sufficiently frequent to yield data which reasonably characterize the nature of the discharge of the monitored effluent flow or pollutant. Variable effluent flows and pollutant levels may be monitored at more frequent intervals than relatively constant effluent flows and pollutant levels.

Sec. 10. NAC 445A.253 is hereby amended to read as follows:

445A.253 1. Any disposal of pollutants into wells must be regulated to protect the public health and

welfare and to prevent pollution of the ground and surface water resources of the state.

2. If an applicant for a permit proposes to dispose of pollutants into wells as part of a program to meet the proposed terms and conditions of a permit, the director shall specify additional terms and conditions in the final permit which must prohibit the proposed disposal or must control the proposed disposal in order to prevent pollution of ground and surface waters of the state and to protect the public health and welfare.

3. Any permit issued for the disposal of pollutants into wells must be issued in accordance with the procedures and requirements specified in NAC 445A.070 to 445A.340, inclusive~~[-]~~, **and NAC 445A.810 to 445A.925, inclusive.**

4. The director shall utilize in his review of any permits proposed to be issued for the disposal of pollutants into wells any policies, technical information or requirements specified by the administrator in regulations issued pursuant to the Act or in directives issued to the regional offices of the United States Environmental Protection Agency.

Sec. 11. NAC 445A.257 is hereby amended to read as follows:

445A.257 1. Any industrial user who discharges into a publicly owned treatment works which does not have a state approved pretreatment program ~~must~~ **may** be granted a permit by the state. The division of environmental protection shall administer the program of pretreatment for any publicly owned treatment works that does not have a pretreatment program and shall ensure the compliance of each user of the program with the requirements of 33 U.S.C. §§ 1284(b), 1317 and 1318 and 40 C.F.R. §§ 401.10 et seq.

2. The division of environmental protection of the state department of conservation and natural resources shall administer the pretreatment program for any publicly owned treatment works which does not have a state approved pretreatment program and ensure compliance by any industrial user, subject to the pretreatment program with the requirements of sections 204(b), 307 and 308 of the Act, **33 U.S.C. §§ 1284(b), 1317 and 1318**, and any regulations adopted thereunder.

Sec. 12. NAC 445A.260 is hereby amended to read as follows:

445A.260 In accordance with the powers granted in NRS 33.010 ~~[and subsections 1, 9 and 12]~~, *subsection 1* of NRS 445A.445 and NRS 445A.675~~], 445A.685, 445A.690, 445A.695, 445A.700]~~ and ~~445A.685 to~~ 445A.705, *inclusive*, the director may take any appropriate action authorized under the law against a pollution source or any combination of sources which the director has evidence is presenting an imminent and substantial endangerment to the health and welfare of persons, where such endangerment is to the livelihood of such persons.

Sec. 13. NAC 445A.261 is hereby amended to read as follows:

445A.261 The permit may be modified, suspended, or revoked in whole or in part for cause including, but not limited to, the following:

1. A violation of any term or condition of the permit.
2. Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts.
3. A change in conditions or the existence of a condition, which requires either a temporary or permanent reduction or an elimination of the permitted activity. Any such revocation, modification or suspension is effective no later than 30 days after the holder of the permit receives written notice, issued by the director, of the facts or conduct warranting such action.

4. A determination by the department that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by modifying, suspending or revoking the permit.

5. Material and substantial alterations or additions to the permitted facility or activity that occurred after permit was issued which justify the application of new permit conditions or permit conditions that differ from the permit conditions in the existing permit.

6. The department receives new information which was not available at the time the permit was issued that would have justified the application of different conditions of the permit.

7. The standards or regulations on which the permit was based have changed.

8. The department receives notification of a proposed transfer of the permit.

9. A demonstration by any interested person that factors relating to an industrial user are fundamentally different from the factors considered during development of a categorical pretreatment standard applicable to that user. The demonstration must be made in accordance with 40 C.F.R. § 403.13.

~~[5.]~~ 10. A demonstration by any interested person that a publicly owned treatment works consistently removes a pollutant for which a categorical pretreatment standard has been established. The demonstration must be made in accordance with 40 C.F.R. § 403.7.

Sec. 14. NAC 445A.263 is hereby amended to read as follows:

445A.263 1. ~~[The]~~ *Except as otherwise provided in this section, the* director may, after notice and opportunity for a public hearing, modify, suspend or revoke any permit in whole or in part during its term for cause including, but not limited to, the causes listed in NAC 445A.261 or for failure or refusal of the holder of the permit to carry out the requirements of NAC 445A.247.

2. The director may, upon the request of the holder of the permit, revise or modify a schedule of compliance in an issued permit if:

(a) He determines good and valid cause, such as an act of God, strike, flood, materials shortage or other event over which the holder has little or no control, exists for such revision; and

(b) Within 30 days following receipt of notice from the director, the regional administrator does not object in writing.

3. The director may, upon request of the holder of a permit, modify or revoke and reissue a permit to identify the new permittee and incorporate such other requirements as necessary if:

(a) The current permittee notifies the department at least 30 days before the proposed date of the transfer; and

(b) The notice provided pursuant to paragraph (a) includes, without limitation, a written agreement between the existing and new permittees containing a specific date for transfer of the permit responsibility, coverage and liability.

4. With the consent of the permittee and without public notice, the director may make minor modifications to a permit to:

(a) Correct typographical errors;

(b) Clarify the language of the permit;

(c) Require more frequent monitoring or reporting by the permittee;

(d) Change an interim compliance date;

(e) Allow for a change in ownership or operational control of a facility if the department determines that no other change in the permit is necessary, and a written agreement containing a specific date for transfer of permit responsibility, coverage and liability between the current and new permittees has been submitted to the department;

(f) Change the construction schedule for a discharger which is a new source if such change does not affect an obligation of the discharger to have all pollution control equipment installed and in operation prior to discharge; or

(g) Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits.

5. The director may reissue a permit that has been revoked and may require an updated application from the permittee of the revoked permit.

6. If a permit is to be modified, only the conditions that are subject to modification may be considered or affected by the modification. If a permit is to be revoked and reissued, the entire permit may be considered and is subject to revision.

7. A person aggrieved by the modification, suspension or revocation of a permit may file a notice of appeal with the commission within 10 days after the date of notice of action of the department, except as otherwise provided by law.

Sec. 15. NAC 445A.105 and NAC 445A.246 are hereby repealed.

TEXT OF REPEALED SECTIONS

445A.105 "Refuse Act application" defined. "Refuse Act application" means the application for a permit under section 13 of the River and Harbor Act of March 3, 1899.

445A.246 Application of more stringent standards of performance. Notwithstanding any other provision of NAC 445A.070 to 445A.340, inclusive, any industrial point source, the construction of which is commenced after the date of enactment of the Act and which is so constructed as to meet all applicable standards of performance, is not subject to any more stringent standards of performance during a 10-year period beginning on the date of completion of the construction or during the period of depreciation or amortization of the facility for the purposes of section 167 or 169, or both, of the Internal Revenue Code of 1954, whichever period ends first.

END OF PETITION 1999-05